Remarks/Arguments:

Claims 1-13 stand rejected. Claims 14-26 are canceled without prejudice or disclaimer of the subject matter thereof.

The Examiner's Rejections Under 35 U.S.C. 102(b) Should Be Withdrawn

Both the Patent Office and the CAFC (formerly the CCPA) have historically required that a single reference teach each and every element of the claim. That requirement is clear and unequivocal. Atlas Powder v. I.E. DuPont, 750 F.2d 1569, 224 USPQ 409 (CAFC 1984). James Bury Corp. v. Litton Industrial Products, 750 F.2d 1556, 225 USPQ 253 (CAFC 1985).

Claims 1-8 and 14-21 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,539,898 to Gatto.

Applicant's invention is directed to a multi-layer roofing material for convertible tops. The outer layer is formed of at least about 25% polymeric coated yarns. The inner lining, or headliner, is formed of non-coated conventional yarns such as cotton, polyester, or a combination thereof. The roofing material construction is completely by connecting the inner and outer layers with an adhesive waterproofing layer. More specifically, as amended, Claim 1 requires that the adhesive waterproofing layer bond the outer layer and inner layer together.

Gatto is directed primarily to a protective screen for horse blankets having an outer layer of mesh material to loosely cover the exterior of a horse blanket. Gatto's mesh construction is further characterized as having 113-160 openings per square inch, which by definition is a very open weave. The Examiner relies upon Gatto to teach a multi-layered construction. Gatto's multi-layered blanket, however, is not an intgral construction; rather, Gatto's multi-layered blanket comprises "independent units of substantially equal shape and size joined by common fasteners at the edges". (Col. 3, Lines 13-15). A specific objective of Gatto is to provide a construction where only "some of the blanket layers may be used". (Col. 3, Lines 15-16 and Col. 5, Lines 8-12). Thus, Gatto lacks a multi-layered construction having inner and outer layers that are permanently bonded together. Lacking this key element, Gatto cannot form the basis for a proper rejection under 35 U.S.C. 102(e).

The Examiner's Rejections Under 35 U.S.C. 103(a) Should Be Withdrawn

The CAFC (and the CCPA before it) have repeatedly held that, absent a teaching or suggestion in the primary reference for the need, arbitrary modifying of a primary reference or combining of references is improper. The ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577. 221 USPQ 929, 933 (Fed. Cir. 1984). In re Gieger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

Claims 9-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatto (U.S. Patent No. 6,539,898) in view of U.S. Patent No. 4,996,100 to Druckman et al. Claims 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatto in view of U.S. Patent No. 6,557,590 to Swers et al.

Even if Gatto were a proper reference, which it is not, Gatto is not helped by Druckman et al. First, applicant submits that Druckman et al. is not analogous art to combine with Gatto. Applicant notes that Gatto is classified in Classes 119 (Animal Husbandry) and 54 (Harness). Gatto just happens to have a mesh layer that can be placed over an underlying layer. On the other hand, Druckman et al. is found only in Class 428 (Stock Material or Miscellaneous Articles). Aside from the results of word searching, these two references would never be considered in the same field of endeavor.

Even if Gatto and Druckman et al. were in the same field of endeavor, which they are not, Gatto cannot be modified by or combined with Druckman et al. to construct Applicant's invention. Although both Gatto and Druckman et al. are adapted for outdoor use, any similarity or relationship between the two references stops there. Druckman et al. discloses a fabric having a vinyl component, which Druckman et al. refers to as "hard" yarn, combined with "soft" yarns which may be polyester, polypropylene, acrylics, modacrylics, etc. These acrylic hard yarns are not even the same material as Gatto, and the Examiner has offered no reason why they could be substituted for Applicant's coated polymeric yarn. Additionally, Druckman et al. does not even disclose a coated yarn. Further, in the preferred embodiment, Druckman et al.'s warp and fill have a range of 10 to 50 picks per inch (Col. 2, Lines 38-40), which is, contrary to the objectives Gatto, a very tight, dense weave. This tight construction helps to bond the vinyl yarns to one another when heat set (Col. 2, Lines 43-46).

Applicant respectfully submits that the Examiner has attempted to piece together the features and aspects of Applicant's construction from two unrelated pieces of prior art. The Federal Circuit has stated that:

> Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. * * * Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.

In re Dembiczak, 50 USPQ2d 1614, 1617.

The Federal Circuit has also stated that:

> It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.
>
> In re Fritch, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992).

Applicant, thus, respectfully requests that the Examiner withdraw her rejection under 35 U.S.C. 103(a).

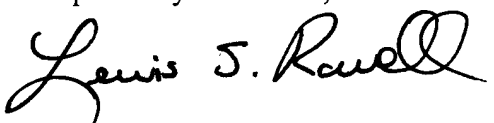
With respect to the Examiner's second rejection under 35 U.S.C. 103(a), again, even if Gatto were a proper reference, it is not properly combinable with U.S. Patent No. 6,557,590 to Swers et al. First, and again, Applicant submits that Swers et al. is not even analogous art to Gatto. Swers et al. is classified in Classes 139 (Textiles: Weaving) and 442 (Fabric Woven, Knitted, or Nonwoven Textile or Cloth, Etc.), and are not in the same field of endeavor.

The Examiner relies on Swers et al. only to show the "effect" yarns that are included in Applicant's fabric construction, yet the uses of "effect" yarns in fabric production are specific to

the yarn materials, fabric construction, and desired results. In short, the term "effect" as applied to yarns is virtually meaningless unless it is defined in terms of a particular use. The real heart of the Swers et al. teaching is a woven structure of warp and fill yarns in which at least some of the fill yarns are self-coating composite yarns formed of high melt and low melt yarn constituents. Upon heating in a tentering operation, the low melt constituents melt, cross-flow to the high melt yarns, and bond the warp and fill yarns at the intersections to achieve fabric stability. The Examiner has simply not suggested how this low melt/high melt bonded construction has any applicability or could be combined with Gatto, or why anyone of ordinary skill in the art would have been motivated to modify the protection screen for horse blankets of Gatto with the bonded construction of Swers et al. None of Gatto's specification is there any suggestion of a problem that would be satisfied, or a screen that could be improved, by a fabric such as that disclosed in Swers et al. Applicant, thus, respectfully requests that the Examiner withdraw her rejection under 35 U.S.C. 103(a).

The Applicants believes that the Examiner's rejections have been successfully overcome, and the application has been placed in condition for immediate allowance. Such action is respectfully requested. However, if any issue remains unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,



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